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6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 In re) Case No. 04-33341-C-7
10 PHILIP D. WESTALL and) DC No. AEM-1
11 CHRISTI L. WESTALL,)
12 Debtors.)
13

14 FINDINGS OF FACT AND CONCLUSIONS OF LAW
15 ON MOTION FOR RELIEF FROM AUTOMATIC STAY
16

17 These findings of fact and conclusions of law are rendered
18 in this contested matter pursuant to Federal Rule of Civil
19 Procedure 52 as incorporated by Federal Rules of Bankruptcy
20 Procedure 7052 and 9014.
21

22 Jurisdiction

23 Jurisdiction is founded upon 28 U.S.C. § 1334. This is a
24 core proceeding. 28 U.S.C. § 157(b)(2)(G).
25

26 Findings of Fact

27 Debtors filed this voluntary chapter 7 petition on
28 November 19, 2004. Debtors scheduled real property commonly
known as 2225 Vernon Drive, Escalon, CA("the property") as an

1 asset of the estate. The property was scheduled as exempt in
2 the amount of \$75,000. The chapter 7 trustee filed a report
3 finding that there was no property available for distribution
4 from the estate over and above that exempted by debtor. On
5 February 22, 2004, debtors received a discharge.

6 On May 24, 2005, Beneficial California, Inc. ("movant")
7 filed a motion, notice, and declaration requesting that this
8 court vacate the automatic stay to permit movant to commence
9 foreclosure proceedings against the property. The motion and
10 declaration establish that the debtor owes the movant
11 approximately \$32,929.57. The value of the property is
12 approximately \$275,000.00. Additionally, the court notes that
13 movant's motion requests attorney's fees and costs. Movant's
14 declaration provides a breakdown of arrears, which includes
15 \$700.00 in bankruptcy fees and costs.

16 A hearing was scheduled for June 28, 2005. Upon review of
17 the record, the court determined that the written record was
18 adequate and took the matter as submitted on the pleadings.

19 20 Conclusions of Law

21 The automatic stay of acts against the debtor in personam
22 and of acts against property other than property of the estate
23 continues until the earliest of the time when the bankruptcy
24 case is closed, dismissed, or an individual in a chapter 7 case
25 is granted a discharge. 11 U.S.C. § 362(c). However, the
26 automatic stay may be terminated earlier if debtor fails to
27 adequately protect the secured party's interest, § 362(d)(1),
28 and, with respect to a stay of an act against property, the

1 debtor does not have equity in the property, § 362(d)(2)(A),
2 and the property is not necessary to an effective
3 reorganization. § 362(d)(2).

4 The motion for relief from the automatic stay is moot as to
5 the debtors because they were granted a discharge.
6 Accordingly, the motion will be denied as to the debtors.

7 As to the chapter 7 trustee, the motion will be granted
8 because the trustee filed a no asset report finding that the
9 estate has no interest in the property.

10 Additionally, in light of the fact that movant's motion was
11 unnecessary, the court denies movant's request for attorney's
12 fees and costs. Reasonable attorney's fees and reimbursable
13 costs for the movant are therefore determined to be zero and
14 may not be charged pursuant to an attorney's fee provision in
15 the underlying contract.

16 An appropriate order will issue.

17 Dated: July 1, 2005

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20 UNITED STATES BANKRUPTCY JUDGE
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CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Philip Westall
2225 Vernon Drive
Escalon, CA 95320

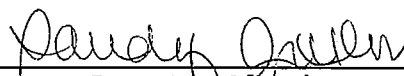
Allan Williams
15760 Ventura Blvd. #1100
Encino, CA 91436

Gary Farrar
P.O. Box 576097
Modesto, CA 95357-6097

Beneficial California, Inc.
c/o Burnett & Matthews LLP
4675 MacArthur Court, Suite 1540
Newport Beach, CA 92660

Office of the United States Trustee
United States Courthouse
501 I St., Suite 7-500
Sacramento, CA 95814

Dated: 7/5/05


Deputy Clerk